



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,562	04/08/2004	Phillip M. Braun	00216-638001	8663
26163 7590 06/04/2010 FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER				
CHIN, RANDALL E				
ART UNIT		PAPER NUMBER		
3723				
NOTIFICATION DATE		DELIVERY MODE		
06/04/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary

Application No.

10/820,562

Applicant(s)

BRAUN ET AL.

Examiner

Randall Chin

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2009 and 20 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27, 29-36, 117-120 and 132-134 is/are pending in the application.
- 4a) Of the above claim(s) 20, 21 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 22-27, 29-33, 35, 36, 117-120 and 132-134 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-646)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Reissue Applications

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-19, 22-27, 29-33, 35, 36, 117-120 and 132-134 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 4-5, the recitation that multiple tufts of bristles "can be placed" beside each other is not deemed a definitive, positive limitation rendering the scope of the claim unclear. It is suggested to change "can be placed" to --are placed-- for completeness.

In claim 12, lines 10-11, the recitation that multiple elements of the second group "can be placed" beside each other is not deemed a definitive, positive limitation rendering the scope of the claim unclear. It is suggested to change "can be placed" to --are placed-- for completeness.

Also in claim 12, lines 9-10, the recitation "and any other rotatable tooth cleaning element on the toothbrush head" makes the scope indefinite since it is unclear whether "any other rotatable tooth cleaning element on the toothbrush head" here is referring to those of the **second group**.

In claim 25, lines 5-6, the recitation that multiple tufts of bristles "can be placed" beside each other is not deemed a definitive, positive limitation rendering the scope of

the claim unclear. It is suggested to change "can be placed" to --are placed-- for completeness.

Claim 12, lines 11-12, the recitation of "in a direction generally orthogonal to a maximum dimension of the toothbrush head" makes the scope indefinite since reference to a direction **generally orthogonal** to "a maximum dimension of the toothbrush head" renders the claim vague as to the **referencing orientation** of such "maximum dimension". In other words, even if a toothbrush head's **width** is its maximum dimension, the claim is unclear as to what aspect/orientation of this width should be referenced with respect to a "direction generally orthogonal" thereto. In any case, the claims should be generally consistent with that set forth by the original disclosure and should not introduce any new matter or apparent new matter. It is suggested to amend claim 12 in a manner similar to that now recited in claim 1, i.e., "...in a direction generally orthogonal to the handle" for a clear understanding of scope, or in some other manner which is clear in scope.

Claim 25, lines 6-7, the recitation of "in a direction generally orthogonal to a maximum dimension of the toothbrush head" makes the scope indefinite since reference to a direction **generally orthogonal** to "a maximum dimension of the toothbrush head" renders the claim vague as to the **referencing orientation** of such "maximum dimension". In other words, even if a toothbrush head's **width** is its maximum dimension, the claim is unclear as to what aspect/orientation of this width should be referenced with respect to a "direction generally orthogonal" thereto. In any case, the claims should be generally consistent with that set forth by the original

disclosure and should not introduce any new matter or apparent new matter. It is suggested to amend claim 12 in a manner similar to that now recited in claim 1, i.e., "...in a direction generally orthogonal to the handle" for a clear understanding of scope, or in some other manner which is clear in scope.

Oath/Declaration

3. In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claims 1-19, 22-27, 29-33, 35, 36, 117-120 and 132-134 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

See MPEP § 1414.01.

Conclusion

4. Applicant's arguments with respect to claims 1-19, 22-27, 29-33, 35, 36, 117-120 and 132-134 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Allowable Subject Matter

5. Claims 1-19, 22-27, 29-33, 35, 36, 117-120 and 132-134 appear to contain allowable subject matter pending clarification of the above noted rejections and suggestions.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Randall Chin/
Primary Examiner, Art Unit 3723